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THE RETURN OF THE LAWYERS' LEADERSHIP.

There is justification for the belief that America is entering upon an evolution, if not a revolution in many elements of government unless restraint be learned and practiced, wherein the lawyers are confronted by a solemn responsibility and rare opportunity to lead a people out of the wilderness of communism, socialism and governmental destruction of individual rights, opportunity and independence. There are many obvious signs. Heretofore, the great masses have been satisfied to follow an organized leadership in most every human activity. But thought is the lamp to the feet that lights the way and inspires personal confidence and self-reliance, though the traveler perchance be upon the wrong road. It generates a force that drives resolution out of the retreat of uncertainty and assures prompt results, whether right or wrong. The observant have not failed to note that Americans are breaking away from old leadership and are thinking independently as they never thought before and are moving and acting with a celerity that is as amazing as it is confusing. There is as much chance of sweeping back the tide as there is of stopping, or even of halting very long, the present passion for change. It is the lawyers' opportunity to lead.

It has grown to be imperatively important, for this reason, that men should think right, that the oil in their lamps should be filled with the material that threw out the pure and bright light that guided the feet of the founders of this great republic. Their example in unselfishness, in patient research for the good and the bad in government, their reverence for constituted authority and their aversion to unnecessary change must be brought home to the people. Manifestly America will live in the spirit of her noble founders, or she will not be America. She will become what opportunists, experimenters and the dissatisfied happen to fashion her. Scientific improvements in practical administration are necessary but they must be provided by friends of the Constitution and those in sympathy with the spirit and genius of democracy as administered through a strong Republic.

If one may judge by the spoken word and performance, a fairly faithful photograph has just been made of the present convictions of the lawyers of America. Therefrom is seen the spirit in which they have entered upon the threshold of 1921. They have a fixed purpose. They are awake, organized, eager and determined. That there was not wanting the violence necessary to awaken a deep slumber, before the awakening came but lends promise to achievement. The rude hand of the undisciplined novice was already tearing away the certainty of the judicial judgment through the agency of the "recall," and North Dakota had planted an outpost of Socialism in America. It was then that the stern voice of a united Bar, guaranteeing a remedy for the ills of which complaint was justly made, stilled the tumult and sent home the mob and there has followed a patient waiting. The painful lack of legislative respect for an aimless and partly organized American Bar is vanishing in the light of this new and militant organization that has much more than doubled its membership and is sending its faithful and consecrated agents amongst the people, asking of them patience and support. It was a great victory for the Bar when a righteous faith in them was manifested by their people. But we cannot be unmindful that a sacred trust was reposed in them by that confidence to which they must and will prove equal and faithful.

No just complaint can be made of the energy, resourcefulness, purpose or the determination of the Bar during the last few years and campaigns of education are increasing in fervor and intensity. But much

disappointment is justified at the results attained in the past in bettering juridical and judicial matters, in preventing the establishment of socialism and communism and in separating the three departments of government. What is the reason for lack of satisfactory results? The legislative department has for many years trespassed upon the judicial department of government, usurped its cardinal powers and placed it in subjugation. Patience and time have been necessary to effect a change. Under these conditions, too, lawyers possessed small influence except in the livery of a politician or the role of a statesman. It is, therefore, not surprising that it has not been so long a time since a recommendation of the Bar was a cause for levity instead of respect. The greatest stimulant to the strength now forcibly evident is the growing consciousness and habit of thinking of lawyers as officers of the Court —a thing that the Englishman seldom permits himself to forget and never allows Parliament or the judges to ignore.

One result of the legislative interference with the courts may be briefly stated. Congress and the legislatures, without consultation with the lawyers, prepared the most highly technical procedure of the Courts, regulated the delicate machinery of trials by rigid, unrelated, unscientific statutes; fixed the tenure and compensation of judges, their manner of trial and punishment, their selection and their retirement, the terms of Court, the costs of trials and every other detail of the sacred administration of justice. The practical, active experts were virtually ignored. But a purpose was served. The existence of this impractical condition, upon being grasped by intelligent laymen, caused their protest to be heard in legislative halls. The old libel that lawyers make laws that create litigation was driven to its den.

But the thing came to pass that was feared by every member of the Federal Constitutional Convention and it was one subject upon which they were unanimous. In order to prevent this legislative usurpation, Mr. James Wilson of Pennsylvania, seconded by Mr. Madison, proposed a coalition between the Chief Executive and the Judicial Department. The motion was defeated, it is very pertinent to emphasize, not for lack of the dire need of *some* formidable defense, but because it was believed by the members that the lawyers and intelligent laymen would prevent it. This is a sacred trust, sometimes overlooked. The past failure has been a blot upon an otherwise fair escutcheon.

The program for the present year is full of promise. A substantial majority of Congress and the legislatures, without reference to political inclination, is now heartily cooperating in the effort to apply scientific methods to all government but in particular to the administration of justice and the uniformity of legislation and of decision. Under this inspiration the American Bar Association, in a few years, has jumped in numbers from less than 3,000 to more than 12,000 members and bids fair to double that number. In usefulness it has progressed from an organization of premier social prominence to one of the highest public importantce and influence. Its members are giving mature and consecrated thought to proposed legislation, in addition to preparing and submitting statutes of its own devising. It is successfully directing attention to Constitutional limitations and a scientific division of duty amongst the three departments of government. The judges have organized and are increasing the tendency and possibility of uniformity in decision, as well as of legislation, and are making sure a higher standard of American jurisprudence.

It is not too much to say that, yielding to the spirit of the Constitution, there will soon be returned to the judges and lawyers the inherent responsibility of seeing to the proper conduct of the Courts. It must not be overlooked that it is the judges and lawyers upon whom all criticism is visited, not upon Congress and the legislatures, although the latter are solely responsible.

The American people are turning to their lawyers and with them are going back to the Constitution. There is a recrudescence of the Colonial idea of individual rights, duty and responsibility. They are beginning to understand that the pioneer's division of government into three departments must be religiously respected, lest the legislative department follow the example of its predecessors in history and destroy the republic, and that property rights and equal opportunity must be respected and assured. The elder statesmen of the Bar have been wisely organizing and placing the harness of active service and leadership upon the young men, upon whose efforts the *imprimata* of their approval has been vigorously placed and to whose support they generously come. The era of the lawyers' influence and leadership is possible and is almost at hand. Once aroused and systematically organized, there is no group on earth with whom the lawyers fear to cope and, throughout history, none that has proven more faithful to the best interest of a confiding people.

The words of de Tocqueville, spoken in 1835, are appropriate: "When the American people are intoxicated by passion, or carried away by the impetuosity of its ideas, it is checked and stopped by the almost invisible influence of its legal counsellors." This influence, said the French Sage, is the only assurance under a strong republic of democracy in America. What an inspiration, and what a warning!

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NOTES OF IMPORTANT DECISIONS.

POWER OF INDIANA COAL COMMISSION TO FIX THE PRICE OF COAL SUSTAINED.—In a very loosely reasoned decision, the United States District Court (D. Indiana) held that the Special Coal and Food Commission of Indiana would not be enjoined as to its power to fix the price of coal until such prices so fixed were found to be confiscatory or to interfere with interstate contracts or shipments. American Coal Mining Co. v. Special Coal and Food Commission, 268 Fed. 563.

This case was heard by Circuit Judges Baker and Evans and District Judge Gieger. The basis of the decision is the police power which, according to the opinion in this case, may be extended to any subject which in any way affects the public and is not restricted to any particular matter or thing. The Court said:

"In this present inquiry concerning the right of the plaintiff to a preliminary injunction, the only federal question presented is that which arises under the Fourteenth Amendment. The Fourteenth Amendment was adopted, according to my present memory, in 1868. In 1868 there was a certain circle within which a person had his life, his right to his physical being. Within that circle he had free movement, and it was not until he came to cross its periphery that he collided either with his fellowmen or with the government as a social organism. And similarly in 1868 there existed circles which circumscribed a person's business and property rights.

Now, did the adoption of the Fourteenth Amendment mean that civilization was arrested at that date? Did it mean that the historian of the year 3000 would look back to the year 1868 as the time of the formation of a crystallized stratum of civilization in which as in the geological stratum, he might find the footprints of the megatherium and the fossils of the dinosaurus? If that is true, then every attempt since 1868 to narrow the circle within which one was entitled to life has been in violation of the federal Constitution. If that is so, then every statute which created and defined a new crime and provided a punishment for it was unconstitutional. If that is so, then every time a new condition was imposed by which liberty of contract was restricted, and this circle was diminished in its area, the statute creating the condition was unconstitutional. Property is coupled with life and liberty. It is thereby entitled to equal consideration, but certainly to no greater. And therefore a state Legislature was just as free to limit the circle in which property rights stood as it was to diminish the circles in which life and liberty, freedom of contract, freedom of action, were circumscribed."

One cannot read this opinion with its uncertain reference to different "circles" of life, liberty and property requiring different regulations without coming to the conclusion that the police power so indefinitely defined, will ultimately become the destroyer of all constitutional government. The price-fixing statutes which have become so numerous since the world war have captivated the minds of the people until they seem willing to exchange the priceless boon of security in life, liberty and property, which few people in the world enjoy, for the uncertain temporary advantage of price fixing.

Price fixing is a dangerous interference with the laws of economics. The delicate equilibrium of supply and demand cannot long be disturbed without seriously affecting business con-

ditions. And the people are likely in the end to suffer more than they gain by such disturbance. For the men usually appointed to sit on such price fixing commissions are politicians wholly unfamiliar with the laws of economics and sometimes even without extensive business experience and thus fall an easy prey to the "buncombe" of shrewd financiers. Even the Court in the principal case saw this possibility, for it said to the plaintiffs, "You have not been hurt by the orders of this Commission. You may never be injured by such orders. You may be ordered to sell coal at $2.50 per ton when you would be quite willing to accept $2.25 per ton." To fix a price for any commodity creates a legal monopoly and destroys competition in that commodity. The result is that the incentive to reduce costs in order to reduce prices is destroyed and waste and extravagance fastens an unnecessary burden on the backs of the people.

And then see what is lost. The security which every man under the American Constitution had a right to have in the product of his toil is swept away. For, if such loose declarations of the limitless extent of the police power is to be sustained, the legislature may take any man's property by the method of regulating the price. If the legislature can fix the price of coal why may it not fix the fees of the family doctor. Surely one is as necessary as the other. If the law can fix rents why may it not fix the price of sewing machines. And, indeed, if it begins to fix the price of one article which is not a legal monopoly (such as franchises) why should it not be compelled to fix the price of every other commodity? It would be unfair to fix the price of shoes if the law permitted the tanners to charge what they desired for their hides.

Price fixing is always a taking of property. If the price is too high the people are deprived of the excess in price; if too low, then the producer who has bought his plant equipment or his machinery at higher prices than his competitors, will suffer a distinct loss. To thus interfere with one's right to sell his own property for such a price as will net him a fair profit is to deprive him of his property without due process of law.

RIGHT TO BILL OF REVIEW WHEN ONE FEDERAL COURT AFFIRMS AND ANOTHER DENIES A PATENT RIGHT. — The difficulty in adjusting rights of patent litigants where in one Circuit the patent is valid and in another invalid has always been apparent and the practice in this regard confusing. This matter has been settled by the Supreme Court of the United States in the recent case of National Brake & Electric Co. v. Christensen, 41 Sup. Ct. 154, where the Court held that where after affirmance of a decree for plaintiff in a suit for infringement of a patent and pending an accounting, the patent was adjudged invalid by the Circuit Court of Appeals for another circuit, defendant had a right to petition the Court affirming the decree for leave to file in the court of original jurisdiction a bill in the nature of a bill of review, setting up the new matter as a bar to further proceedings.

The Court cited Re Potts 166 U. S. 263 and Re Gamewell Co., 73 Fed. 908, as determining the practice in this class of cases. In concluding its opinion the Supreme Court said:

"In our view the proper practice in matters of this sort required the Circuit Court of Appeals to regard the petition, taking all its allegations together, and with its prayer for general relief, as an application for leave to file in the District Court a petition in the nature of a bill of review invoking a consideration of the effect of the judgment in the Third Circuit. Such consideration the Circuit Court of Appeals may well be directed to undertake in the exercise of its proper function in determining the rights of the parties, and for that purpose its judgment should be reversed, without passing in this court upon the merits of the petition. This procedure is sanctioned by former decisions of this court. Lutcher & Moore Co. v. Knight, 217 U. S. 257, 30 Sup. Ct. 505, 54 L. Ed. 757; Cramp v. Curtiss Co., 228 U. S. 646, 33 Sup. Ct. 722, 57 L. Ed. 1003; Brown v. Fletcher, 237 U. S. 583, 35 Sup. Ct. 750, 59 L. Ed. 1128."

In the case of Re Potts, 166 U. S. 263, 17 Sup. Ct. 520, the United States Supreme Court reversed a decree of the Circuit Court dismissing a bill upon a patent, holding that the patent was valid and had been infringed by the defendant, and remanding the cause to the Circuit Court for further proceedings. It was held that the Circuit Court had no authority to grant or entertain a petition filed without leave of this court for a rehearing for newly discovered evidence, and that mandamus was the proper remedy to set aside the order of the Circuit Court failing to execute the mandate of this court. The authorities were reviewed by Mr. Justice Gray, speaking for the court. Among other things he said:

"In this respect, a motion for a new trial or a petition for a rehearing stands upon the same ground as a bill of review, as to which Mr. Justice Nelson, speaking for this court, in Southard v. Russell, above cited, said: 'Nor will a bill of review lie in the case of newly discovered evidence after the publication, or decree below, where a decision has taken place on an appeal, unless the right is reserved in the decree of the appellate court, or permission be given on an application to that court directly

for the purpose. This appears to be the practice of the Court of Chancery and House of Lords, in England; and we think it founded in principles essential to the proper administration of the law, and to a reasonable termination of litigation between the parties in chancery suits.' 16 How, 570, 571. So, in United States v. Knight, 1 Black, 488, 489, Chief Justice Taney said that, in a case brought before this court exercising general jurisdiction in chancery, 'the defeated party, upon the discovery of new evidence, may, after a final decree in this court, obtain leave here to file a bill of review in the court below to review the judgment which this court had rendered."

RECENT DECISIONS OF THE BRITISH COURTS.

The distinction between the clean and qualified Bill of Lading is well established in our law. A clean bill of lading is a document by which the master of the vessel acknowledges without qualification that he has received a certain weight or number of goods and undertakes to deliver the same weight or number of goods. If, at the discharge of the vessel, it turns out that the weight or number specified in the bill of lading is not forthcoming, the ship is not answerable because of the discrepancy merely, but the *onus* is upon the shipowner to prove that the fact that he has delivered less than is stated in the bill of lading is not due to any failure upon his part to fulfill his duty. Accordingly, if he is able to prove that the whole of the goods which he in fact received had been delivered he is exonerated from all responsibility, because the master of a ship has no authority to bind the shipowner for a larger quantity than he has received. Where, however, the bill of lading is qualified by the words "weight, quality, quantity, and contents unknown" or similar statement, it is not *prima facie* evidence against the ship of the amount or quantity shipped, and the *onus* is shifted on to the cargo-owner of proving what in fact was shipped. These principles were given effect to in the recent case of Craig Line Steamship Co., Ltd., v. North British Storage and Transit Co., 1920, 2 S. L. T. 423. The Bill of Lading was a qualified one, and the Court held that it was the duty of the shippers to prove that the Bill of Lading quantities had in fact been shipped. The shipowner was suing for his freight; and the cargo-owners counterclaimed on account of short delivery. Judgment was granted for the balance of freight due and the counterclaim was dismissed. It appears to have been held by some judges of first instance that in the qualified bill of lading the initial statement that a specified quantity had been received by the ship put on the shipowner the *onus* of proving in the event of short delivery that he in fact did not receive as much as stated. This doctrine, however, which would virtually put the clean and the qualified bill of lading on the same footing has received its *quietus* by the case mentioned.

Employers are now being urged on all hands to take up welfare and betterment schemes for their employees, and generally to be more human in their general attitude and exhibit less of the soulless corporation attitude towards things in general. So far as limited companies are concerned the recent case of Evans v. Brummer Mond & Co., Ltd. 150 L. T. 326, suggests that such corporations may not have the power to do such a thing. In the case referred to, the Judge approved of the action of the Directors, but one feels that his interpretation of the position was a very liberal one, and one scarcely in accord with strict legal principles. The case arose by way of motion by the plaintiff suing on behalf of all the shareholders for an injunction restraining the defendant company from applying £100,000 by way of donation, or otherwise acting upon an extraordinary resolution that the directors be authorized to distribute to such universities or other scientific institutions in the United Kingdom as they might select, for the furtherance of scientific education and research, the sum of £100,000 out of investment surplus reserve account. The company's main object was the business of the manufacture of chemicals in all its branches. The objects as stated in its memorandum of association were: "To carry on in all its branches the trade or business of chemical manufacturers;" "The doing of all such business and things as may be incidental or conducive to the attainment of the above objects or any of them." The evidence of the chairman and directors of the company stated that its welfare was increasingly dependent upon the advance of pure science; that the greatest difficulty of the company was to find men sufficiently equipped by their previous studies in pure science to undertake its research work, and a larger reservoir of men, highly trained in the universities and scientific schools of the country, was necessary to the company; that the directors were of opinion that the company might, with great advantage to its business, apply funds in assisting centres of scientific education; that the proposed application of £100,000 was eminently desirable in furtherance of the company's business of chemical manufacturers and essential exclusively regarding such business; and that the welfare of the company's business required that such schools and universities should re-

ceive adequate support. For the plaintiff it was contended that the proposed contribution of the company's fund, although beneficial to the community at large would not tend to the direct benefit of the defendant company, and a declaration was claimed in the action that the distribution and payment of any part of the sum was *ultra vires* the objects and powers of the defendant company. It was held, the resolution being limited by an implied obligation, that the authority must be exercised by the board bona fide in the interests of the company, that on the evidence the proposed application was not too general nor the balance of advantage to the company's business too remote, and no order for an injunction would be made on the motion.

The distinction familiar to our common law between a lump sum payable as a whole at one time only and sums which accrued *de die in diem* was largely done away with by the Apportionment Act of 1870, which provided that rents, interests, dividends and annuities (including salaries and pensions) and sums payable under agreements should accrue to the creditor from day to day and should be apportionable in respect of time accordingly. Now an accepted principle in regard to directors' remuneration has been that where their contract with the company provided for payment *at the rate of* a specified sum per annum, this was apportionable to the period served in the event of the services of the director ceasing before completion of the year; but on the other hand, if the contract was so much per annum, nothing accrued till the year was completed. A recent appeal in the King's Bench Division from the County Court covered the point whether a director of a company whose fees were fixed at £150 per annum (without the use of the words "at the rate of") could recover in respect of a period of 150 days which he has served. Mr. Justice Lush was able to allow the appeal, having come to the conclusion that the plaintiff was in receipt of a salary, and that *prima facie* the salary was apportionable. Here the parties did not expressly contract that the salary could not be apportionable. All that the agreement said was that plaintiff's fees for acting as a director should be £150 a year, and it left the question whether apportionment applied or not to the statute itself. There was nothing in the contract itself which forced him to say that the plaintiff had contracted with the company that he would in no case claim the apportionment of his salary. Seeing the plaintiff was in receipt of a salary he came to the conclusion that he could recover pro rata unless there was a stipulation on the part of the company that unless he served for a whole year he should receive nothing. Moreover, it was plain, both upon the authorities and upon the facts, that the parties contemplated that the sum would be apportionable. He therefore held that the Apportionment Act applied, and the plaintiff was entitled to recover. Mr. Justice McCardie agreed, and the appeal was accordingly allowed, and judgment for the plaintiff for the amount claimed with costs.

The recent decision of Mr. Justice Eve in Anglo-French Music Co., Ltd., v. Nicoll and another, follows the well-known case of Fraser and Chalmers, Ltd. (1919). The point in question was the position of preference shares in the allocation of a surplus. As is well known preference shares, in the event of a deficiency, come before the ordinary shares, but what is their position in the event of a surplus? Do they cease to participate further seeing that complete repayment of capital has taken place? The cases mentioned decide that where there is nothing in the company's articles or other contract arrangements expressly or impliedly controlling the rights of the preference shareholders, then, in the event of there being an excess of assets, the preference shareholders have the right to share *pari passu* in surplus assets.

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INJURIES ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT — II — GOING TO AND FROM WORK.

General Consideration—The general rule in construing compensation laws is that the responsibility of the employer begins when his employee enters his premises to perform the services required of him, and terminates when the employee leaves such premises, providing that he does not loiter needlessly or arrive at an unreasonable hour in advance of the beginning of his duties.[1]

The word "employment," as used in the compensation acts, is not synonymous with work. It extends to all things which the

(1) Gordon v. Elby, 1 Cal. Ind. Acc. Com'n Dec., No. 1; Griffith v. Cole Bros., Ia., 165 N. W. 577, 1 W. C. L. J. 368.

employee is entitled by the contract of employment expressly or impliedly to do.[2]

Employment is not limited to the exact moment of arrival at the place of actual work, nor to the moment of retirement therefrom. It includes a reasonable amount of time before and after actual work.[3]

If the injury does not occur on the premises, but in close proximity to the place of work, and on a road or other way intended and contemplated by the contract of employment as being the exclusive means of access to the place of work, it may still arise out of and in the course of the employment.

"If the place at which the injury occurred is brought within the contract of employment, by the requirement of its use by the employee, so that he has no discretion or choice as to his mode or manner of coming to work, such place and its use seem logically to become elements or factors in the employment, and the injury thus arises out of the employment and is incurred in the course thereof."[4]

On the contrary, if the employee, at the time of the injury, has gone beyond the premises of the employer, or has not reached them, and has chosen his own place or mode of travel, the injury does not arise either out of or in the course of the employment.[5]

Although actually through with the work, or not yet commenced, he is in the scope of his employment if he is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time.[6]

"A person who is in an employment carries with him during the period, whether in the day or night or whatever time it may be, that he is bound to work, all the privileges that are conferred by this act; but when he has left that employment in the evening, or at any other hour, from that time until he arrives next morning at the place where his field of employment is, he is in the same position as any other member of the public. He carries with him into his period of leisure no insurance from his employer. If he takes a dangerous course, he takes it at his own risk."[7]

It has been held that an employee was in the course of his employment while leaving work to go home;[8] while on his way after working hours to a sleeping room provided by the employer;[9] while eating his meals;[10] while going to meals;[11] while returning from a shanty where he had eaten his meal;[12] while on his way to cook his meal;[13] where he left his work and was on the roof for the purpose of taking fresh air;[14] while going for his dinner pail after working hours;[15] while putting on his coat

(2) Brice v. Lloyd, 101 L. T. 472 (1909), 2 K. B. 804, 25 T. L. Rep. 759, 53 Sol. J. 744, 2 B. W. C. C. 26.

(3) Gane v. Morton Hill Colliery Co., 100 L. T. 979 (1909), 2 K. B. 539, 25 T. L. Rep. 640, 2 B. W. C. C. 42; Kinney v. Baltimore & O. Emp. Rel. Ass'n, 35 W. Va. 385, 14 S. E. 8, 15 L. R. A. 142.

(4) De Constantin v. Public Service Com'n, 75 W. Va. 32, 83 S. E. 88, L. R. A. 1916A 329.

(5) De Constantin v. Public Service Com'n, 75 W. Va. 32, 83 S. E. 88, L. R. A. 1916A 329.

(6) Griffith v. Cole Bros., Ia., 165 N. W. 577, 1 W. C. L. J. 368; Hills v. Blair, 182 Mich. 20, 148 N. W. 243; Bryant v. Fissell, 84 N. J. L. 72, 86 Atl. 458.

(7) Benson v. L. & Y. R. Co., 6 W. C. C. 20, 23, quoted approvingly in Guastelo v. Michigan Cent. R. Co., 194 Mich. 382, 160 N. W. 484, 15 N. C. C. A. 241.

(8) Terlecki v. Strauss, 85 N. J. L. 454, 89 Atl. 1023; In re Sroeb, Ohio Ind. Com'n, No. 36817; In re Fahrey, 155 Op. Sol. Dept. Labor 218; In re Stacy, 225 Mass. 174, 114 N. E. 206.

(9) Dougherty v. Liability Corp., 1 Mass. W. C. Cas. 450.

(10) Blovert v. Sawyer (1904), 1 K. B. 271, 73 L. J. K. B. 155, 89 L. T. 658, 20 T. L. Rep. 105, 6 W. C. C. 16, 3 N. C. C. A. 277; Bryce v. Lloyd, 2 B. W. C. C. 26.

(11) In re Sundine, 218 Mass. 1, 105 N. E. 433, L. R. A. 1916A 318; Rowland v. Wright (1909), 1 K. B. 963, 99 L. T. 758, 77 L. J. K. B. 1071, 24 T. L. Rep. 852, 1 B. W. C. C. 192, 3 N. C. C. A. 278. However, it was held that an injury to a workman did not arise out of the employment when he fell through a hole in a tank on which he had been sitting eating his supper; it appearing that he had no right to go near the tank, and that the employer had provided a dining room for the employes. Brice v. Edward Lloyd (1909), 2 K. B. 894, 101 L. T. 472, 79 L. J. K. B. 37, 25 T. L. Rep. 759, 2 B. W. C. C. 26, 3 N. C. C. A. 278.

(12) Earnshaw v. Lancashire & Yorkshire R. Co., 5 W. C. C. 28, 3 N. C. C. A. 277.

(13) Morris v. Lambeth, 22 T. L. Rep. 22.

(14) In re Von Ette, 223 Mass. 56, 111 N. E. 696, L. R. A. 1916D 641.

(15) Taylor v. Bush, 5 Pen. (Del.) 378, 61 Atl. 236.

after the day's work;[16] where, while delivering ice, he left his team and started to a house for shelter;[17] while on his way to procure material to be used in his work;[18] while going from one job to another for the purpose of inspection.[19]

Riding in Own Conveyance—As a rule, when the employee is traveling to or from work in a conveyance supplied by him or a third person, and he has gotten beyond the sphere of his employment so that he is no longer exposed to the dangers of such employment, he is not within the protection of the compensation laws. On the other hand, the employment may be of such a nature that the employee is in the course thereof while traveling to the place of work. Such kind of employment was that of a millwright whose duties required him to go to places as directed by his employer to install machinery. At the time in question he was going to a certain town where machinery was to be installed, riding in an automobile belonging to his son, when the automobile upset and he was injured. On such occasions he was allowed to use any means of transportation he wished, and was paid for the time on the road, and his traveling expenses were paid. On the present occasion the employer's manager was preceding him, and directing him and his son on the journey by showing them the road. It was held that he could recover compensation.[20]

Where an employee was killed while returning to a city to spend Sunday from a town to which he had been sent to set up farm machinery, in violation of instructions to remain there until he had finished his work, such accident did not arise out of nor in the course of the employment.[21]

Deceased, employee of a refinery, was on his way home, riding his motorcycle, and when about three-fourths of a mile from the refinery gate, he collided with an automobile and was killed. The street in question was a public one, and was used by a large number of refinery employees, but it was not the only route that deceased could have gone. Held, that no recovery could be had, as deceased had left the locality and sphere of his employment, and was doing nothing within the scope of his employment, and was not at the time under the direction or control of his employer.[22]

Where a workman, on his way home over a route across his employer's property, which he was allowed to use, tried to board a train moving up an incline, and was killed in the attempt, there being a rule that no one except those in charge of a train should, without special permission, ride on it when moving on an incline, the accident did not arise out of the employment.[23]

A solicitor's clerk was also clerk to the justices of a court which was held about 10 miles from the solicitor's office. He had to attend court on his employer's business and generally went there and returned by train, but sometimes traveled on a bicycle, to his employer's knowledge and without his disapproval. In returning from the court to his employer's office on a bicycle the clerk collided with a motor car and received injuries from which he died. It was held that the accident did not arise out of nor in the course of the employment.[24]

Where, however, the evidence showed without dispute that the employee was al-

(16) Helmke v. Thilmany, 107 Wis. 216, 83 N. W. 360.

(17) State ex rel. v. District Court, 129 Minn. 502, 153 N. W. 119, L. R. A. 1916A 344.

(18) Coster v. Thompson Hotel Co., Neb., 168 N. W. 191, 16 N. C. C. A. 905.

(19) Kunze v. Detroit Shade Tree Co., 192 Mich. 435, 158 N. W. 851, 15 N. C. C. A. 253.

(20) London & L. Indem. Co. v. Industrial Acc. Com'n, Cal. App., 170 Pac. 1074, 16 N. C. C. A. 909.

(21) International Harvester Co. v. Industrial Board, 282 Ill. 489, 118 N. E. 711, 1 W. C. L. J. 762.

(22) American Indemnity Co. v. Dinkins, Tex. Civ. App., 211 S. W. 949, 4 W. C. L. J. 294, 18 N. C. C. A. 1034.

(23) Pope v. Hill's Plymouth Co. (1912), W. C. Rep. 15, 105 L. T. 678, 5 B. W. C. C. 175, 3 N. C. C. A. 273, aff'g 102 L. T. 632, 3 B. W. C. C. 339.

(24) Read v. Baker, 140 L. T. 466, 32 T. L. Rep. 382, 60 Sol. J. 402, 12 N. C. C. A. 383.

lowed to ride to and from work on his bicycle on the employer's time, compensation was allowed for an injury sustained by the employee while riding to work.[25]

A member of a city fire department who was injured while returning to his work on a motorcycle after his midday meal, was not within this provision of the statute.[26]

A boy employed in a general retail store was injured while riding his motorcycle on his way from home to the store. He was intending to stop at a market on his route to the store to buy fresh vegetables for his employer, an errand which he regularly performed, but the accident occurred before he had reached the market. Held, that the risk resulting in the accident had no connection with the employment.[27]

Where one was employed to haul logs from the woods to a mill, using his own team and sleigh, and was injured on his way from his home to the woods to secure the first load for the day, it was held that the injury arose out of and in the course of the employment. "Deceased was following out instructions previously given by starting for the place where he was to perform the service for which the plaintiff employed him."[28]

In Conveyance of Employer—Where employees are transported to and from their place of work by the employer, as part of their contract of employment, the period of service continues during the time of transportation.[29]

The rule has been laid down that the employer's liability in such cases depends upon whether the conveyance has been provided by him, after the real beginning of the employment, in compliance with one of the implied or express terms of the contract of employment, for the mere use of the employees, and is one which the employees are required, or as a matter of right permitted, to use by virtue of that contract.[30]

Injury to tobacco plantation workers after they had entered into a contract of employment, and while being driven to the place of work in an automobile furnished by the employer, pursuant to the employment contract, arose out of and in the course of the employment.[31]

A plumber, employed to make private connections with city sewers and water pipes, who was injured when the truck, in which he was going to get pipe left over at another job, was struck by a street car, was injured by an accident arising out of and in the course of the employment.[32]

It appeared that the employers, as part of the contract with their employees, agreed to pay them 90 cents a day as transportation charges to and from the place of work. This was in addition to their regular wages. The employers arranged with one of the workmen, who had an automobile, to carry the others. While returning from work, the automobile was struck by a train and the workmen were killed. Held, that the accident arose out of and in the course of the employment. "Transportation to and from his work was incidental to his employment; hence the employment continued during the transportation in the same way as during the work. The injury occurring during the transportation occurred within the period of his employment, and at a place where the decedent had a right to be, and while he was doing something incidental to

(25) Hiserman v. Garside, 1 Cal. Ind. Acc. Com'n. 516.

(26) Hornberg v. Morris, Wis., 157 N. W. 556, 12 N. C. C. A. 384.

(27) Hummer v. Hennings, 2 Cal. Ind. Acc. Com'n. 857, 12 N. C. C. A. 384.

(28) Faust Lumber Co. v. Koltz, Wis. (Cir. Ct.), 12 N. C. C. A. 385, following rule laid down in Milwaukee v. Althoff, 156 Wis. 68, 4 N. C. C. A. 110.

(29) Alabama G. S. R. Co. v. Brock, 161 Ala. 351, 49 So. 453; Abend v. Terre Haute, etc., R. Co., 111 Ill. 202, 53 Am. Rep. 616; Ryan v. Cumberland Valley R. Co., 23 Pa. St. 384.

(30) Donovan's Case, 217 Mass. 78, 104 N. E. 431, Ann. Cas. 1915C 778; Scalia v. American Sumatra Tobacco Co., Conn., 105 Atl. 346, 3W, C. L. J. 230; Swanson v. Latham, 92 Conn. 87, 101 Atl. 492; Baudry v. Watkins, 191 Mich. 445, 158 N. W. 16, L. R. A. 1916F 576; Kunze v. Detroit Shade Tree Co., 192 Mich. 435, 158 N. W. 851, L. R. A. 1917A 252.

(31) Scalia v. American Sumatra Tobacco Co., Conn., 105 Atl. 346, 3 W. C. L. J. 230.

(32) Scully v. Industrial Com'n., 284 Ill. 567, 120 N. E. 492, 3 W. C. L. J. 30.

his employment, because contemplated by it."[33]

One employed as garbage collector and who was injured as a result of his horses becoming frightened while he was taking his equipment to the barn of his employer, after making the last load for the day, was within the protection of the compensation law.[34]

Injuries incurred by an employee while riding from one job to another in a conveyance furnished by the employer, are compensable.[35]

But not when the employee rides on the conveyance in violation of the employer's instructions.[36]

Walking to and from work—It was customary for an employee, sent to secure samples of fat for his employer, when he could not finish his inspection and return to the plant of the employer before 6 p. m., to bring the samples the following morning. On the occasion in question he left the plant of another and was going home after 7:15 p. m., after securing the necessary samples, when he was injured. Held, that the accident did not arise out of and in the course of his employment, whether or not he was carrying samples when injured.[37]

A member of a section crew left his toolhouse at noon and started for his home for his midday meal, walking along the track to a station, and on the way was struck and killed by a train. It was held that these facts were insufficient to show such relation between the accident and decedent's duties as to establish that the injury arose out of and in the course of his employment.[38]

An employee, while returning home from his place of work, entered a railroad yard, not a part of his employer's plant nor under its control, and was there killed by a train. His contract of employment did not provide for transportation to or from work, or for pay for time so consumed. Held, that the accident did not arise out of and in the course of the employment. "If he had chosen to use the public ways, and had been injured by a defect or passing vehicle, the administrator could not recover against the employer, because there would be no causal connection between the conditions of employment and the injuries suffered."[39]

On the Employer's Premises—The period of employment may cover a period other than that for which wages are paid, and the place of employment may include places on the employer's premises traversed by the employee in going to and from his work and the places used by the employee with the employer's consent.[40]

Injuries have been held to arise out of and in the course of the employment when received by the employee, while going to the timekeeper's office at the close of the day's work;[41] while being hoisted from a mine after the day's work was finished;[42] while

(33) Swanson v. Latham, 92 Conn., 87, 101 Atl. 492.

(34) Milwaukee v. Fera, Wis., 174 N. W. 926.

(35) Yeargin v. Bode, Ind. Indus. Bd. No. 62, 12 N. C. C. A. 371; Mack v. Pacific T. & T. Co., 1 Cal. Ind. Acc. Com'n. 44, 12 N. C. C. A. 373.

(36) Gonzales v. Lee Moor Contr. Co., 2 Cal. Ind. Acc. Com'n. 325.

(37) N. K. Fairbank Co. v. Industrial Com'n., 285 Ill. 11, 120 N. E. 457, 17 N. C. C. A. 948. Similar holding where pieceworker was injured while on the way to factory where she was employed, and carrying bundle of goods on which she had worked at home. Malott v. Healey, 2 Cal. Ind. Acc. Com'n. 127, 12 N. C. C. A. 392.

(38) Hills v. Blair, 182 Mich. 20, 148 N. W. 243, 7 N. C. C. A. 409.

(39) Leveroni v. Traveler's Ins. Co., 219 Mass. 488, 107 N. E. 349, 15 N. C. C. A. 245.

(40) Larke v. John Hancock Mut. L. Ins. Co., 90 Conn. 303, 97 Atl. 320, L. R. A. 1916E 584, 12 N. C. C. A. 308; Northwestern I. Co. v. Industrial Com'n., 160 Wis. 633, 152 N. W. 416.

(41) Stephens Engineering Co. v. Industrial Com'n., 290 Ill. 88, 124 N. E. 869, 5 W. C. L. J. 205.

(42) Moury v. Latham C. & M. Co., 212 Ill. App. 508, 18 N. C. C. A. 1034.

going to get his lunch, on a flight of stairs, outside the work room, not under the control of the employer, but which afforded the only means of going to and from the work room;[43] while in the lower berth in a bunk-house, in which he was required to sleep, by a straw falling in his mouth from the upper berth and lodging in his throat;[44] while attempting to use an elevator in going to his work, by falling into the elevator shaft;[45] while walking towards the shop exit, after the day's work, although on the way out he was not using a board walk intended to be used by employees going to and from work.[46]

But where an employee, after quitting time, after washing and putting on his coat and hat, turned back to look about the working room for his companions, and in doing so put his head into an elevator shaft and was killed by the descending elevator, it was held that the accident did not arise out of and in the course of the employment.[47]

A like ruling was made in the case of a car inspector, who, while going home for his dinner, fell from a trestle about half a mile from the place where he stopped work, but within the employer's railroad yards.[48]

The article next week will deal with injuries received during temporary cessation of work.

C. P. BERRY.

St. Louis, Mo.

(43) In re Sundine, 218 Mass. 1, 105 N. E. 433, L. R. A. 1916A 318.

(44) Holt Lumber Co. v. Industrial Com'n., Wis., 170 N. W. 366, 3 W. C. L. J. 549.

(45) Starr Piano Co. v. Industrial Acc. Com'n., Cal., 184 Pac. 860, 5 W. C. L. J. 14.

(46) Baltimore Car Fdy. Co. v. Ruzicka, Md., 104 Atl. 167, 2 W. C. L. J. 791, 17 N. C. C. A. 945.

(47) Urban v. Topping Bros., 184 App. Div. 633, 172 N. Y. Supp. 432, 3 W. C. L. J. 184.

(48) McInerney v. Buffalo & S. R. Corp., 225 N. Y. 130, 121 N. E. 806, 3 W. C. L. J. 494.

JUDGMENT—PERJURED TESTIMONY.

WILMER v. PLACIDE.

Court of Appeals of Maryland. Nov. 17, 1920.

111 Atl. 822.

Litigation will not be reopened on the ground that a judgment was obtained by perjured testimony.

Was the court right in refusing to permit the deposition to be read in evidence? A good deal of Mr. Bond's evidence was wholly irrelevant, and the only part of it that could, under the plaintiff's claim, be said to be pertinent was that in reference to the deeds for and the mortgage on the Madison avenue property. He testified that he left Baltimore in 1892, and did not come back permanently until 1913, that he only visited Baltimore in that interval three or four times, but there is not the slightest suggestion that he could not have been procured at the hearing by Wilmer, if his evidence was deemed important or desirable. There may be some question about what property is referred to in the other counts, but there can be none as to the fifth and sixth counts, as they refer to No. 1300 Madison avenue. There are few, if any, instances in the reports of decisions of courts where one property has been more in litigation than that. There was every opportunity, as shown by the records and decisions of this court, for this appellant to present every phase of the cases that was permissible, and in some of them some points were pressed which had no foundation in law or equity. Speaking then of the Madison avenue property, this suit is an attempt to continue, or, to speak more accurately, to reopen litigation in a way that has no justification under the decisions of this court, whatever may be the rule in any other jurisdiction.

The fifth count alleges that—

The defendant "did by fraud, fraudulent conspiracy and perjury dispossess and deprive the plaintiff of his rights in said property, and in furtherance of said object wrongfully and willfully, corruptly and fraudulently, repudiate her certain deed of said property to her sister, theretofore duly executed, acknowledged, delivered, and recorded, and, in order to perfect said fraud, did willfully on false testimony and otherwise commit, and cause to be committed, perjury in a certain suit and suits pending between the plaintiff and defendant in the several courts of Baltimore city."

The sixth count alleges that the defendant executed a mortgage on said property, which became the property of the plaintiff, "and

that by false testimony, perjury, fraud, and conspiracy, said Susan E. Placide did, by abuse of the process of the courts of Baltimore city, cause the plaintiff to lose his property in said mortgage, and to be otherwise injured and damaged."

In the case of Wilmer v. Placide, 118 Md. 305, 84 Atl. 491, Susan E. Placide filed a bill against Edwin M. Wilmer, alleging that she was the owner of No. 1300 Madison avenue, which was conveyed to her by Edwin M. Wilmer and George W. Lindsay, trustees, by deed dated June 16, 1887; that on the 3d of November, 1890, she gave to her sister, Alice B. Wilmer, who was the wife of Edwin M. Wilmer, a mortgage, which was assigned by her to the Mercantile Trust & Deposit Company, which assigned it to Edwin M. Wilmer on the 28th of December, 1897, and which the bill alleged had been fully paid. The bill also alleged that Wilmer was largely indebted to the plaintiff for money collected by him for her, and for money intrusted to him to be paid upon the mortgage, which he failed to apply thereto, and wrongfully took an assignment of the mortgage to himself; that after the death of Alice B. Wilmer, the plaintiff took charge and control of and cared for her three infant children, and in 1897 she allowed said Wilmer to bring to the Madison avenue home, where he, his children, and the plaintiff then lived, his two sisters and two nieces, and permitted them to occupy the greater part of her house under an agreement that he would pay all expenses, taxes, repairs, and interest on the mortgage, etc.

Wilmer in his answer denied the plaintiff's ownership of the Madison avenue property, and alleged that after the conveyance to the plaintiff by the trustees, she conveyed it away, denied the alleged indebtedness and the agreement as to the occupancy of the house, and that the plaintiff had paid any part of the mortgage, excepting a small amount for which credit was given at the time of the assignment to him. On December 28, 1910, Miss Placide filed a bill against Edwin M. Wilmer, Henry Placide Wilmer and E. Placide Wilmer, sons of Edwin M., and H. V. Morse, husband of a deceased daughter of Edwin M. Wilmer, in which she alleged that Edwin M. had left for record in the clerk's office a deed dated the 28th of July, 1887, by which she was said to have conveyed to her sister, Alice B. Wilmer, the house and lot known as No. 1300 Madison avenue. She denied that she ever signed such a deed, and alleged that she never heard of it until at or about the time it was put on record, which was on December 8, 1910. Alice B. Wilmer died intestate on June 29, 1891, and Edwin M. claimed a life estate in said property as the husband of his deceased wife. A great mass of testimony was taken, and there were numerous exceptions filed by Wilmer to the rulings of the court upon the admission or rejection of testimony.

The two cases were consolidated, and there was a decree passed which set aside the alleged deed, and the papers in the case were referred to the auditor to state an account as therein directed. Both sides appealed to this court. It will be noticed that the mortgage was given over 3 years after the alleged deed was made, which deed was not recorded for more than 23 years after its date—while the first suit referred to above was pending. The two surviving children of Edwin M. Wilmer filed an answer, admitting the allegations of the bill, and said they never heard of the alleged deed and were willing and anxious that it be declared void and of no effect. The testimony showed that Edwin M. Wilmer had drawn the petition to the court and the order thereon for his wife, who was trustee, to loan the money on the mortgage, and that he had drawn a number of papers which showed that the property belonged to Miss Placide.

Miss Placide testified that she had frequently signed papers at Wilmer's instance without understanding what was in them, owing to the confidence she then had in him. She denied that she had gone before the justice of the peace before whom the deed to Mrs. Wilmer purported to have been acknowledged while Mr. Bond in his deposition said he was present when she acknowledged it, but as will be seen in the opinion in 118 Md. 305, 84 Atl. 491, the conclusion reached by the court was "almost exclusively upon the conceded testimony in the case." In Wilmer v. Placide, 127 Md. 339, 96 Atl. 621, there was an attempt to have the decree passed in 118 Md. 305, 84 Atl. 491, vacated and set aside. The grounds relied on were fraud and newly discovered evidence, and the fraud was alleged to consist of perjured evidence. As to the latter, the court said it fell directly under the rule laid down in Maryland Steel Co. v. Marney, 91 Md. 360, 46 Atl. 1077. The authorities there cited by Judge Stockbridge showed too clearly the opinion of this court on the subject to require further citations or discussion of the question. While the case reported in 127 Md. 339, 96 Atl. 621, was an effort to set aside and vacate a decree, the principle involved in this case is the same—indeed a court of equity would be more anxious to set aside a decree obtained by perjured testimony than a court of law could be to sustain such a

suit as this. There must be an end to litigation somewhere, and if the litigant who loses his case is to be permitted to sue the opposite party for alleged perjury and gains that case, what is to prevent that party from suing him on the same ground, and thus indefinitely continue the litigation?

In this state the defense of res adjudicata can be relied on either by special plea or under the general issue plea. Impervious Products Co. v. Gray, 127 Md. 64, 96 Atl. 1, where some of the earlier cases are cited. As not only the lower court, but this court, had decided the questions involved in reference to the ownership of No. 1300 Madison avenue, and had refused to strike out the decree on the alleged ground that it had been obtained by perjured evidence and fraud, it would be a reflection upon the administration of justice to hold that, notwithstanding the records of this court show the facts and circumstances connected with the cases, and its decisions have disposed of the questions, either it or a court subject to be reviewed by it is required to entertain and pass on the same questions in another proceeding between the same parties. There could be no possible doubt that this court would be authorized to consider its own records and decisions on the subject, and hence, if there is any question about the right of the lower court to do so, this court would hold it not to be reversible error, even if it be conceded that there was technical error, in rejecting evidence which must ultimately be rejected.

There is nothing whatever in the evidence of Mr. Bond which could reflect upon the allegation in the sixth count as to the abuse of the process of the courts of Baltimore city, quoted above. Without quoting from it, what a malicious abuse of legal process consists of is shown by Judge McSherry in Bartlett v. Christhilf, 69 Md. 219, 14 Atl. 518, and there is nothing in the records of this court in the cases in reference to the Madison avenue property which could possibly sustain or admit of a charge of abuse of legal process. So without further discussing the question, we are of the opinion that the deposition of Mr. Bond was properly excluded.

NOTE—*Vacating Judgment on Ground of Perjured Testimony.*—In conformity with the holding in the reported case, it is generally held that a judgment will not be set aside on the ground of perjured testimony. United States v. Throckmorton, 98 U. S. 61, 25 L. ed. 93; Vance v. Burbank, 101 U. S. 514; Pico v. Cohn, 91 Cal. 129; Hamilton v. McLean, 139 Mo. 678; Robinson v. Robinson, 77 Wash. 663, 138 Pac. 288, 51 L. R. A. (N. S.) 534. Where, however, it appears that the defeated party was not at fault and was not guilty of negligence in not showing at the trial that material testimony given by his adversary was false, some courts hold that such false testimony is sufficient for setting aside the judgment. Koop v. Acken, 90 Neb. 77, 132 N. W. 721; McDougall v. Walling, 21 Wash. 478, 58 Pac. 669, 75 Am. St. Rep. 849. But when the term of court during which judgment was entered has passed, the general rule is that the ground must consist in something extrinsic or outside of the matter which was actually tried or so in issue that it could have been tried in the action in which the judgment assailed was rendered. Nelson v. Meehan, 155 Fed. 1, 83 C. C. A. 597.

In Barr v. Post, 59 Neb. 361, 80 N. W. 1041, 80 Am. St. Rep. 680, it was held that the intentional production by a litigant of false testimony to establish a cause of action or defense amounts to such a fraud as will, in a proper case, entitle the adverse party, if unsuccessful, to the vacation of the judgment rendered against him.

So, if the false swearing is accompanied by any fraud, extrinsic or collateral to the matter involved in the original case, sufficient to justify the conclusion that but for such fraud the result would have been different, the judgment may be set aside. Graves v. Graves, 132 Ia. 199, 109 N. W. 707, 10 L. R. A. (N. S.) 216.

If jurisdictional facts are falsely represented to the court, the judgment will be set aside, although the judgment recites that such jurisdictional facts did exist. Davis v. Albritton, 127 Ga. 517, 56 S. E. 514, 8 L. R. A. (N. S.) 820. An instance of this kind is false allegation of domicile by the plaintiff in a divorce suit. Edson v. Edson, 108 Mass. 590, 11 Am. Rep. 393. Where a husband procured a divorce on constructive service by alleging that he resided in the county of the venue, and that his wife was a non-resident of the state, both statements being false, and the wife, after the term of court had expired, brought suit to set aside the decree, the court vacated the decree and dismissed the original complaint for want of jurisdiction. Carney v. Carney, 79 Ark. 289, 95 S. W. 135. This goes to the jurisdiction of the court, and amounts to fraud.

ITEMS OF PROFESSIONAL INTEREST.

THE TITLE, MR. JUSTICE.

In the Probate, Divorce and Admiralty Court at London, during the trial of an unimportant suit, a country solicitor witness examined by Mr. W. O. Willis, for the petitioner, referred to the respondent and the co-respondent as having been tried before "Judge Coleridge."

Mr. Justice Horridge—"I hate to hear one of His Majesty's judges referred to in that way.

The term is an Americanism and in this country is only applicable to County Court judges. The title 'Mr. Justice' is a very old and respected title and a solicitor ought to know better than to say 'Judge This or That.' "

The witness apologized.

—*Montreal Gazette* (Feb. 23, 1921).

[Note.—This news item from Canada will interest American lawyers who are charged with corrupting the honorable title of "Mr. Justice" to the more undignified term "Judge." In this country the word "Justice" is applied to two extremes of judicial distinction, namely, to "Justices" of the Supreme Court of the United States and to "Justices" of the Peace found in any cross-road village. As lawyers we should probably be more careful in the titles given to our judicial officers; such care would hardly derogate from our cherished ideals of Democracy.—Editor.]

BOOK REVIEW.

MISSOURI DIGEST—VOLUMES 16 AND 17.

It has come to our attention that we failed to review supplementary volumes 16 and 17 of the Missouri Digest.

This great digest of the West Publishing Company has supplanted every other local digest in Missouri by sheer strength of its superiority.

There can be no doubt that the classification of subjects of law in the American Digest System is so familiar to attorneys that they decline to make the effort to become familiar with any other system of classification. The Key Number is also a great mechanical advantage. All the digests of this system, national and state, are not only tied together so that the discovery of a case in point in one leads at once to the same line of authorities in the others, but this same advantage is continued into the advanced sheets of recent decisions as well as into the supplementary state digests such as we have before us for review at this time.

These two supplementary volumes to the Missouri Digest cover the Appellate and Supreme Court reports to April, 1916, and the same standard of excellence in paper, typography and binding are maintained as was set in the previous volumes of this set.

HUMOR OF THE LAW.

"Aunt Dorcas," an old negro mammy, upset the dignity of the Beaumont police court by calmly threatening to knock Judge A. L. Love out of his chair as she sat on the witness stand, testifying in an affray and abusive language case. It happened this way:

"Now, state that again," said Judge Love during the course of the testimony, to Aunt Dorcas, who had once worked for him as cook. The old mammy looked at him closely, and suddenly recognizing him, she said:

"That you, Mr. Love?"

"Correct you are," the judge replied, to which Aunt Dorcas made the astonishing rejoinder:

"What you all doin' up theah? I's a good mind to knock you all out o' that chair with a stick."

Judge Love led the laugh.

An argument isn't necessarily a quarrel, but according to a police magistrate of Uxbridge, England, "a quarrel is an argument."

Having settled that nice point of law the judge faced the difficulty of differentiating between an argument, a debate and monolog. The prisoner at the bar, arrested for disturbing the peace, asserted:

"Hi was 'aving no h'argument with my wife."

"Just a simple little debate, I imagine," the court smiled.

"Hit was no debate, I imagine," the culprit insisted.

"Then it must have been an argument," the court said.

"Hi was not a-arguin' with 'er," urged the accused husband. "Hi was a-tellin' 'er."

The dawn was cold and chilly. Outside the grim walls of the prison the kindly old gentleman was waiting to greet the discharged prisoners. He approached one and asked if he needed any help.

"My poor friend," he began, "what brought you to this?"

The ex-convict addressed began to weep copious tears of repentance.

"I dunno, sir," he replied sadly, "unless it was attendin' too many weddin's."

"Ah, you learned to drink at those festivities, or perhaps to steal?" the old gentleman put in, sympathetically.

"No, it wasn't that. You see, I was always the bridegroom."—*Pennsylvania Punch Bowl.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

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1. **Animals**—Escaping Animals Held Not Running At Large.—Under the Night-Herd Law (Gen. St. 1915, §§ 10974-10976), stock is confined when means shown by experience to be adequate for the purpose are employed, and, if an escape occur without fault of the owner, the escaping animals are not regarded as running at large. —Abbey v. Schaff, Kans., 194 Pac. 191.

2. **Army and Navy**—Defense to Performance of Contract.—Neither the federal Soldiers' and Sailors' Relief Act March 8, 1918 (U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. 1919, §§ 3078¼a-3078¼ss), nor any other state or federal statute, or rule of common law, releases a party from the obligations of his civil contracts because he has been accepted for military service but has not yet been inducted into such service. —Continental Jewelry Co. v. Minsky, Me., 111 Atl. 801.

3. **Attachment** — Voluntary Substitution of Bond for Attachment Does Not Prevent Discharge of Liability.—The fact that the statutory bond for release of attachment was accepted voluntarily by the plaintiff, and the attachment released by him and not by the order of the court, does not prevent discharge of the liability of the surety when the attachment became void under the Bankruptcy Act, § 67f (U. S. Comp. St. § 9651).—Republic Rubber Co. v. Foster, Conn., 111 Atl. 839.

4. **Attorney and Client**—Disqualification.—A conference between an attorney and attorneys for will contestants, in which the contestants themselves did not participate, relative to the employment of such attorney to represent contestants on trial of contest, resulting in the rejection by contestants of the terms upon which the law firm of which such attorney was a member, were willing to accept employment, did not disqualify other member of such firm from appearing for proponent.—In re Champion's Estate, Iowa, 180 N. W. 174.

5. **Bankruptcy**—Bill to Cancel Mortgage for Usury Must Tender Payment With Lawful Interest.—Under the law of Georgia, a bill by a trustee in bankruptcy for cancellation of a deed given to secure a debt by an owner of property, who afterward conveyed to the bankrupt subject to such deed, on the ground that the debt secured was usurious, held not to state a cause of action, where it made no offer to pay such debt, with lawful interest.—Lanham v. State Bank of Rome, Ga., U. S. C. C. A., 268 Fed. 458.

6.——Crops on Homestead Exempt.—Under the law of Texas that unsevered crops on land embraced in a rural homestead, exempt under the state Constitution, are included in the exemption, such crops do not pass to the trustee in bankruptcy of the owner of the homestead, under Bankruptcy Act, § 70a (Comp. St. § 9654).—Stratton v. Hines, U. S. C. C. A., 268 Fed. 533.

7.——Homestead Exempt.—A two-story building owned and duly claimed several years before as a homestead by bankrupt, a married woman, who with her husband occupied the second floor and one room below as a residence, held exempt under the Law of Alabama, although the larger part of the lower story was adapted and leased for business purposes.—Burrow, Jones & Dyer Shoe Co. v. Wallace, U. S. C. C. A., 268 Fed. 532.

8.——Insolvency Matter of Law.—Evidence regarding an alleged bankrupt's assets, consisting principally of disputed claims against railroads and others, and liabilities, composed largely of petitioning creditors' claims for breach of contract to accept corn tendered it, held to establish insolvency as matter of law.—Walker Grain Co. v. Gregg Grain Co., U. S. C. C. A., 268 Fed. 510.

9. **Bills and Notes**—Demand on Administrator.—Where maker of note had died at time it became due, and an administratrix had been appointed, no place of payment being stated in the note, a demand upon the administratrix was necessary before bringing an action.—North Nat. Bank v. Hall, Me., 111 Atl. 755.

10.——Note As Collateral for Existing Note.—A bank which took a note indorsed for accommodation as collateral security for a note which it already held and which was not payable until some time in the future, without giving any promise for future extensions, is nevertheless a purchaser of the note for value under the established decisions of the state which have since been enacted into statute, Negotiable Instruments Act, § 25.—Elgin Nat. Bank v. Goecke, Ill., 129 N. E. 149.

11. **Brokers**—Parol Contract. — Where the owner of land exchanged it for other property and $1,000 cash pursuant to written contract signed by her and the other party reciting "commission agreement between (such other party) and (plaintiff) has been agreed upon," and the agreement for commission between plaintiff, the broker who assisted in the transaction, and the other party to the exchange, was in parol, no action could be maintained thereon by plaintiff against the other party, under

Comp. Laws 1915, § 11981, making void every agreement not in writing to pay commission on the sale of realty.—Purdy v. Law, Mich., 180 N. W. 251.

12. **Carriers of Passengers** — Treatment as Negro.—Testimony by a passenger, who had been carried beyond her destination, that the conductor treated her as if she were a negro, was a conclusion and does not justify an award of punitive damages, where there was no evidence of any violence or insolent or discourteous act by the conductor.—Murrell v. Charleston & W. C. R. Co., S. C., 105 S. E. 350.

13. **Civil Rights**—Statute Held Valid. — Civ. Code, § 51, requiring all persons to be awarded equal accommodations and privileges in theaters, etc., and section 52, making person denying any such rights except for reasons applicable alike to every race and color liable in damages, are valid.—Jones v. Kehrlein, Cal., 194 Pac. 55.

14. **Commerce**—Crane for Unloading Coal Cars Not Engaged in "Interstate Commerce."—A crane used for unloading coal cars, so as to create a coal reserve to be used in both interstate and intrastate commerce in case of a threatened strike, was not engaged in "interstate commerce," and a person killed while on his way to work upon such crane could not recover under the federal Employers' Liability Act.—Kozimko v. Hines, U. S. C. C. A., 268 Fed. 507.

15.——Engineer Engaged in "Interstate Commerce," When Getting Oil in Preparation for Trip.—Where, after an engineer was called for an interstate trip and began preparations, he went through the yards to procure oil for the journey, and was killed on returning, he was engaged in "interstate commerce," so that action had to be brought under the federal Employers' Liability Act.—Hines v. Burns' Adm'x., Ky., 226 S. W. 109.

16. **Constitutional Law**—Due Process of Law. —In a railroad bridge carpenter's action for personal injuries sustained at the time when the railroad was under federal control, a judgment against the railroad held not a taking of its property without due process of law.—Hite v. St. Joseph & G. I. Ry. Co., Mo., 225 S. W. 916.

17. **Contracts**—Mutuality. — Where a lumber company which burned most of the shavings of its planing mill agreed that if plaintiff would construct a blowpipe it would deliver to him the surplus shavings, plaintiff to make stipulated monthly payments, etc., the contract which required plaintiff, unless unable to accept the shavings, was not open to attack on the ground of want of mutuality.—Kennon v. Brooks-Scanlon Co., La., 86 So. 675.

18.——Owner Under Duty to Point Out Sites for Buildings in Order to Hold Contractor to Time for Performance.—If a company, which contracted for the erection of buildings or camps on its land, expected the work to be completed within the time fixed by the contract, it must have seasonably performed its duty to point out sites for the buildings if the contractor to erect them is to be held to the strict letter of his obligation in respect of time.—Suburban Land Co. v. Brown, Mass., 129 N. E. 291.

19. **Corporations**—Purchase of Stock Acceptance of Agreement to Repurchase at Certain Price.—Where defendant stockholders, in order to induce plaintiff to purchase stock of the corporation, agreed in writing to purchase any and all of such stock at a fixed price between certain dates at plaintiff's option, purchase of such stock by the plaintiff in reliance upon defendant's agreement showed an acceptance of such agreement; such agreement not being signed by plaintiff.—Culp v. Holbrook, Ind., 129 N. E. 278.

20. **Covenants** — For "Residence Purposes" Only.—Under a restrictive covenant in his deed that the lot should be used for residence purposes only, defendant had a right to build a 41 apartment building on the premises.—Teagan v. Keywell, Mich., 180 N. W. 454.

21. **Criminal Law**—Criminal Syndicalism Law Not Unconstitutional.—The Criminal Syndicalism Act held constitutional so far as its provisions were material in a prosecution for circulating and displaying books and other printed and written matter prohibited by that act.—People v. Malley, Cal., 194 Pac. 48.

22. **Deeds**—Undue Influence.—The undue influence which will annul a deed must be of that potency which substitutes somebody else's will power for that of the grantor.—Burroughs v. Reed, Ga., 105 S. E. 291.

23. **Divorce** — Action Pending in Another State.—The pendency of an action for a divorce in another state is not a bar, nor a cause for stay, of proceedings, in a similar action between the same parties in this state, where a court of this state has obtained jurisdiction of the defendant by service of summons.—Omer v. Omer, Kans., 193 Pac. 1064.

24.——Evidence of Adultery Subsequent to Bill Admissible to Support Cross-Bill.—In a suit by a wife for divorce, where defendant filed a cross-bill, evidence of adultery by the wife between the time of filing the original bill and the date of the cross-bill is admissible on behalf of the defendant.—Arix v. Arix, Mich., 180 N. W. 463.

25.——Statute prohibiting Trial of Divorce Suit Within 60 Days After Filing of Suit Void.—Acts 1873, c. 43, § 13, as amended by Acts 1913, c. 44 (Burns' Ann. St. 1914, § 1072), prohibiting the trial of a divorce action within 60 days after filing of suit, held void since the Act of 1873 was repealed by the Civil Code (Acts 1881, c. 38) § 367, as amended in 1883 (Acts 1883, c. 133), relating to the time of trial of all actions including divorce suits.—Panty v. Panty, Ind., 129 N. E. 283.

26. **Electricity**—Negligence.—Where an electric company prepared a branch line for the purpose of operating a motor at a windmill, it was negligence for the company to allow poles which had sagged so as to come near the windmill to remain in a position where current might be transmitted into the structure, wires and chains leading from the top, for it is the duty of an electric company to use all reasonable care necessary under the circumstances.—Robinson v. Western States Gas & Electric Co., Cal., 194 Pac. 39.

27. **Eminent Domain**—Evidence That County Did Not Have Right of Way Held Admissible.—Where a county undertakes to lay out a public highway and contends it has a deed to a right of way from a former owner of the land, and where such deed is not of record and there is nothing on the minutes of the board of supervisors to show it had acquired the right of way over such land, it is error to refuse to allow the owner to testify that he bought the land with the understanding that the county did not have a right of way over the land.—Smith v. Board of Supervisors, Miss., 86 So. 707.

28. **Evidence** — Admissions Competent. — In workmen's compensation proceeding, a clerk's uncontradicted testimony that she had charge of reporting accidents to the Industrial Commission and made a report of an accident to which she signed the name of the superintendent of the company, is binding as an admission of liability on the employer.—Anthus v. Rail Joint Co., N. Y., 185 N. Y. S. 314.

29. **Executors and Administrators**—Personal Representative Can Collect for Fire Loss.—A policy insuring a building against fire is a chose in action and personal property which does not run with the land, so that the personal representative of insured, and not his heirs or devisees, is the proper person to collect for loss occurring after the death of insured, regardless

of who may be entitled to the proceeds after collection.—Oldham's Trustee v. Boston Ins. Co., Ky., 226 S. W. 107.

30. **Exemptions**—Debtor May Waive, But Not Assign.—Under the law of Pennsylvania, the right of the debtor to claim property as exempt from the execution is a personal privilege, which he may waive, though he cannot assign it.—In re Gunzberger, U. S. D. C., 268 Fed. 673.

31. **Fraud**—Statement of Intention Not Misrepresentation.—A representation by a chattel mortgagee's representative to the mortgagor's executrix that if not given some security it would foreclose and take other property to pay any balance due was merely the statement of an intention, and not the affirmation of a fact.—Emerson-Brantingham Implement Co. v. Anderson, Mont., 194 Pac. 161.

32. **Fraudulent Conveyances** — Sale of Land and Growing Crop to Wife.—Where a debtor conveyed land and a crop growing thereon to his wife by a deed duly recorded, a subsequent contract by the debtor and the wife for the sale of the land and crop to intervener, though not recorded when a creditor attempted to attach the crop, was not within Code, § 2906, making sales of personal property, without change of possession, invalid against creditors unless filed for record.—Botna Valley State Bank v. Greig, Iowa, 180 N. W. 301.

33. **Injunction** — Optionee Meddling With Property.—One who has an option to rent farming lands on payment of rent at the beginning of the farm rental year, March 1st, may properly be enjoined from meddling with those lands if he has failed to give the grantor of the option some notification of his election to farm the lands, and has failed to pay the specified rent at the time stipulated in the contract.—McBroom v. Wilgus, Kans., 193 Pac. 1068.

34. **Insurance**—Death in Military Service.—The death of insured from influenza contracted while he was at a military training camp after being inducted into the military service in time of war is not death while engaged in the active military service within a clause of the policy exempting the company from liability for death while so engaged.—Rex Health & Accident Ins. Co. v. Pettiford, Ind., 129 N. E. 248.

35.——Joint Policy, Payable to Survivor, Not Collectible by Deceased's Representatives.—Where a husband murdered his wife, an insurance policy on the joint lives of the husband and wife, payable to the survivor on the death of either, cannot be collected by the wife's representatives, although the husband's conviction for the murder precluded him from recovering on the policy.—Spicer v. New York Life Ins. Co., U. S. C. C. A., 268 Fed. 500.

36.——Prohibited Occupation. — Where the beneficiary certificate sued on included switchmen among the list of those prohibited from becoming benefit members, proof that the deceased became a railroad brakeman after his admission to defendant fraternal order did not conclusively establish the defense of his engagement in the prohibited occupation of switchman to render his certificate null and void, and to warrant the trial court in directing verdict for defendant order on its demurrer to plaintiff beneficiary's evidence.—Corbin v. Mystic Workers of the World, Mo., 226 S. W. 65.

37. **Intoxicating Liquors**—Fitness for Use as Beverage.—In a prosecution for having in possession an alcoholic preparation, or remedy containing drugs or medicines, such as are described in section 27, c. 187, Laws 1917, and unfit for use as a beverage, it is essential to a conviction that the compound, preparation, or remedy be "manufactured, bought, sold or dealt in for use as a beverage or intoxicant."—Schemmer v. State, Neb., 180 N. W. 581.

38.——Proof of Corpus Delicti.—In prosecution for selling intoxicating liquor, production of the liquor was not necessary to proof of the corpus delicti, the unlawful sale, and not the liquor, being the corpus delicti.—State v. Ferebee, S. C., 105 S. E. 345.

39.——Where violation of Comp. Laws 1897, § 5381, by selling intoxicating liquor to a person in the habit of getting intoxicated, was charged against defendant druggist by an information alleging a sale by his clerk, proof of a sale by defendant himself was incompetent.—People v. Bricker, Mich., 180 N. W. 383.

40. **Landlord and Tenant**—Continuous Term. —Where there is a lease for a definite term, with the privilege of an additional term at the lessee's option, it operates as a lease for a continuous term, if he so elects.—Briggs v. Bloomingdale Cemetery Assn., N. Y., 185 N. Y. S. 348.

41.——Tenant at Will. — Where vendor continued in possession of land following execution of contract providing for execution of lease by purchaser to vendor, and where purchaser did not execute formal lease, but continued to treat vendor as a tenant, the vendor was at least a tenant at will.—Blinn v. Hutterische Soc. of Wolf Creek, Mont., 194 Pac. 140.

42. **Logs and Logging** — Vendors Conveying Land Subsequent to Sale of Timber Conveyed Reversionary interest in Timber.—Owner, having sold standing timber under contract requiring removal within specified period, by subsequent conveyance of land by deed conveying "all the rights of warranty and other rights held therein by said vendor," divested himself of all interest in the property, including both land and timber. —Brown v. Minden Lumber Co., La., 86 So. 727.

43. **Master and Servant**—Employer Entitled to Invention of Employee.—Where defendant was employed by plaintiff motion picture corporation to improve the light in the studio in every way possible and to use his expert knowledge and ability in that direction, and the general idea of an invention designated a "light dissolve" was that of the manager of the plaintiff, plaintiff was entitled to the invention.—Famous Players-Lasky Corporation v. Ewing, Cal., 194 Pac. 65.

44.——Evidence of Custom to Give Warning of Train's Approach Admissible.—Where plaintiff's intestate, a brakeman on a freight train, jumped from between the cars when the train was slowing for a stop at a station, and was struck and killed by an express train following on an adjoining track, evidence of a custom for express trains to give warning by bell or whistle when approaching the rear of a freight train standing or moving slowly on another track held properly admitted.—Director General of Railroads v. Templin, U. S. C. C. A., 268 Fed. 483.

45. **Mines and Minerals**—Basis for Injunction.—Where the Indiana special coal and food commission publicly threatened to exact penalties from coal mines disobeying their orders, such action will be temporarily enjoined, since the act contains no definite assurance that penalty prosecutions will be postponed pending appeal proceedings.—Vandalia Coal Co. v. Special Coal and Food Commission of Indiana, et al, U. S. D. C., 268 Fed. 572.

46. **Mortgages**—Evading Taxes. — Where one who makes a loan upon real estate causes the note and mortgage securing it to be made payable to a stranger to the transaction, for the purpose of evading the payment of taxes, that fact does not constitute a defense to the mortgage, in an action against the mortgagor brought in the name of the real owner, who has in the meantime taken an assignment from the nominal mortgagee.—Berridge v. Gaylord, Kans., 193 Pac. 1066.

47. **Municipal Corporations**—Acquiescence in Unlawful Use of Streets Does Not Estop City.—The fact that a city has acquiesced for more than 20 years in the use of its streets by a street railway company, not authorized by the franchise, does not estop the city from asserting its right to prevent such use.—City of Milwaukee v. Milwaukee Electric Ry. & Light Co., Wis., 180 N. W. 339.

48.——Changes in Condition Subsequent to Accident Admissible to Identify Place.—In an action for injuries to a pedestrian, who stepped into a defective water meter box placed in the sidewalk, where the identity of the box was in dispute, evidence of changes in the condition of the box, made subsequent to the injury, is competent to identify the box, though it would be incompetent on the issue of negligence.—Bailey v. City of Asheville, N. C., 105 S. E. 326.

49. **Negligence**—Contributory.—It is not sufficient to bar an action that contributory negligence may contribute "in the least degree" or "in any degree," or that it merely "contributes" to the accident or happening; but it must enter into and form a part of the efficient cause thereof before it will bar an action if one otherwise

could be maintained.—Carr v. City of St. Joseph, Mo., 225 S. W. 922.

50.——Firemen Not Chargeable With Driver's Negligence.—City firemen, injured in a collision of a fire truck with a telegraph pole by reason of defendant's negligence in driving an automobile in violation of law, are not chargeable with negligence of the driver of the truck.—Brockstedt v. Meltzer, N, J., 111 Atl. 812.

51.——Mill Owner Not Required to Case Cogs to Protect Child in Mill Without Authority.—Even if cogs on a machine were not sufficiently guarded for the protection of the mill employees or of others lawfully within the mill, the employer owes no duty to guard them for the protection of a child who entered the mill in violation of the employer's orders.—Butner v. Brown Bros. Lumber Co., N. C., 105 S. E. 319.

52.——Wall Adjacent to Public Way Must be Reasonably Safe.—The duty of an owner of land, who maintains a wall or other structure adjacent to a public way, to persons upon the way, is to maintain such structure in a condition that shall be reasonably safe, having regard to its probable deterioration under exposure to air, wind, and water, as also to other lawful attendant conditions reasonably to be anticipated.—Blanchard v. Reynolds, Mass., 129 N. E. 303.

53. **Officers**—Electors Treating Office as Vacant.—One legally elected to an office, who has not resigned or been removed therefrom, may not be deprived of it merely because some of the electors of the district chose to treat the office as vacant, and at an election voted for another to fill the assumed vacancy.—State v. Board of Education of City of Council Grove, Kans., 193 Pac. 1074.

54. **Parent and Child.**—Where a parent is deprived of the custody of a child, and therefore of its services and earnings, he is no longer liable for its support and education; but this exemption is not unconditional, and may not be permanent.—Pacific Gold Dredging Co. v. Industrial Accident Commission, Cal., 194 Pac. 1.

55. **Partnership**—Single Partner Not Responsible for Failure to keep Books Properly. — Where both partners were illiterate, and no real system of bookkeeping was employed, and the books were not continuously or regularly kept, in suit for an accounting by one of them against the other, the master properly refused to hold defendant responsible for the neglect to keep proper books of account.—Poulette v. Chainay, Mass., 129 N. E. 290.

56. **Railroads**—Duty to Furnish Water-Closet Includes Keys Accessible.—Although the carrier furnishing a water-closet required by Ky. St. § 772, has the right to keep the closet locked, it should see that the keys are accessible, and it may leave them with the agent; but when he is absent they should be put in an exposed place, so that they may be readily seen and obtained by patrons.—Commonwealth v. Louisville & I. Ry. Co., Ky., 226 S. W. 105.

57. **Removal of Causes**—State Liquor Tax.—A person indicted for violating a state Liquor Tax Law, by selling a liquid which the federal Prohibition Commissioner had approved, is not entitled to have the case removed to the federal court, under Rev. St. § 643 (Comp. St. § 1015), providing that prosecutions commenced in a state court against revenue officers, or persons holding property under title derived from such officers, etc., may be removed.—Application of Shumpka, U. S. D. C., 268 Fed. 686.

58. **Sales**—Damages for Breach of Contract.—Where defendant buyer refused to receive shipment of oats and they were sold through wholesale grocer for the best price obtainable, freight and demurrage were properly deducted from the gross sale by the grocer in arriving at the balance by the buyer.—Robinson v. O'Bannon Co., Ga., 105 S. E. 255.

59.——Damages for Breach of Warranty.—The machinery purchased being defective, and not in compliance with the warranty given, the plaintiffs were entitled to recover as damages the difference between the value of the machinery as warranted and its value as delivered, and also for the reasonable and necessary repairs made by the plaintiffs in a bona fide endeavor to make it work.—Isaacs v. Jackson Motor Co., Kans., 193 Pac. 1081.

60.——Forfeiture of Payments.—A vendor, in a conditional sale contract providing for a forfeiture of payments upon default, and a return of the property, cannot invoke a forfeiture during the time for which he has given an extension of time of payment, though the extension is without consideration.—Reinkey v. Findley Electric Co., Minn., 180 N. W. 236.

61. **Subrogation** — Party Causing Injury. — Where a fracture of plaintiff's wrist was so negligently treated by a physician as to cause partial loss of the use of the arm, a railway company, whose negligence caused the fracture, on being compelled to pay plaintiff's damages, is subrogated to her rights against the physician for the damages primarily due to his negligence.—Fisher v. Milwaukee Electric Ry. & Light Co., Wis., 180 N. W. 269.

62. **Vendor and Purchaser** — Rescission.—In the absence of fraud, insolvency, or other equitable considerations, or a contract stipulation requiring an abstract showing perfect title, a defect in the record title of the vendor in an executory contract for the sale of land, existing at the date thereof, will constitute no ground for rescission by the vendee or justification for refusal to make deferred payments on the agreed purchase price of the property.—Smith v. Kurtzenacker, Minn., 180 N. W. 243.

63. **Warehousemen**—Contract Against Negligence.—Provision of a warehouseman's receipt that all perishable goods were taken at the depositor's own risk, and that she took the risk of loss or damage by fire, must not be construed as a contract by the warehouseman against his own negligence; such a contract being invalid. —Glazer v. Hook, Ind., 129 N. E. 249.

64. **Wills**—Ademption of Legacy. — The removal by proprietor of whisky business of his stock of whisky and fixtures from a location where he had been conducting his business, and the storage thereof in a public warehouse with the intention of resuming business at some other location, did not work an ademption of legacy, in previously executed will, of his "entire whisky business now conducted at" specified address at which business had been so conducted, though proprietor died while stock was in storage, before the resumption of business, since the specific property bequeathed was in existence at time of his death and subject to identification. —Wiggins v. Cheatham, Tenn., 225 S. W. 1040.

65.——Contract of Survivorship Between Associates.—Contract between four brothers who incorporated insurance business, equivalent to contract to make will, that on the death of any member the property held by the associates was to become that of the survivors, held ineffective, under Code, § 3376, as against the widow of one of the brothers, deceased; he not having sold his interest during his lifetime nor transferred it gratuitously.—Fleming v. Fleming, Iowa, 180 N. W. 206.

66.——Disbursements by Heir.—Where an heir expended large sums in establishing that an alleged will was not the will of the testator, he is entitled to judgment for costs in the litigation in which they were expended.—Weber v. Strobel, Mo., 225 S. W. 925.

67.——Vesting of Remainder.—The remainder of a devise "to my husband, H., for the term of his natural life," certain property "* * * unless he marries again, when it is to become, without division, the property of J.," vested in J. at the death of the testatrix the right to the remainder; possession alone being postponed.—Smith v. Heyward, S. C., 105 S. E. 275.

68. **Workmen's Compensation**—Odd Lot Doctrine.—The "odd lot doctrine" is that, if the effects of an accident have not been removed, it is not sufficient, to entitle an employer to have a reduction in the weekly compensation ordered by the court under the Workmen's Compensation Act, that it appears the workman has the physical capacity to do some kind of work different from the general kind of work which he was engaged in at the time of the accident, but it must also be shown that the workman, either by his own efforts or that of his employer, can actually get such work; that is, the burden is on the employer to show that the workman can get a job.—Lupoli v. Atlantic Tubing Co., R. I., 111 Atl. 767.